

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NO. 4:20-CV-230-FL

DANIEL J. WILLIS,

Plaintiff,

v.

JONES COUNTY BOARD OF
ELECTIONS and NORTH CAROLINA
STATE BOARD OF ELECTIONS, and/or
their successors,

Defendants.

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ORDER

This matter is before the court upon plaintiff's motions to dismiss his appeal and for refund of fees incurred filing that appeal (DE 35). The court grants plaintiff's motion to dismiss his appeal and grants in part and denies in part his motion for refund.

Rule 42(a) of the Federal Rules of Appellate Procedure allow a district court to "dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties" as long as the appeal has not yet been docketed by the circuit clerk. Plaintiff has satisfied the latter of the conditions by filing the instant motion and doing so before the circuit clerk docketed is appeal. Accordingly, his appeal is DISMISSED.

The \$505.00 fee paid by plaintiff is in part a \$500.00 fee for docketing the appeal in the United States Court of Appeals for the Fourth Circuit and in part a \$5.00 filing fee for the notice of appeal. Local Rules of the Fourth Circuit 3(a). Where plaintiff's case has not yet been docketed

by the circuit clerk, a refund of the \$500.00 fee is proper. However, plaintiff has not shown that the filing of the notice of appeal was erroneously paid in such a manner to warrant refund.

For the foregoing reasons, plaintiff's motion to dismiss appeal is GRANTED. The clerk is DIRECTED to terminate plaintiff's notice of appeal. Plaintiff's motion for refund of fees is GRANTED IN PART and DENIED IN PART. The clerk is DIRECTED to issue a partial refund to plaintiff in the amount of \$500.00, representing the fee paid for docketing the appeal, but not the fee for filing the notice of appeal.

SO ORDERED, this the 21st day of June, 2021.



LOUISE W. FLANAGAN
United States District Judge